

DETAILED ACTION

Status of Claims

1. This action is responsive to RCE amendment filed on January 9, 2009, where Applicant amended claims 1,45. Claims 1-4,6-9,12-26,28-34,36-41,43,45-48 are pending.

Response to Arguments

2. Applicant's arguments filed 12/5/08 have been fully considered but they are not persuasive.
3. Applicant argues that Apfel doesn't disclose automatic download.

In reply, Apfel clearly teaches this in column 10 lines 52-54, where Apfel teaches where a "download query is initiated and sent by computer 20". Furthermore column 10 lines 45-46 clearly teach automatic initiation of a download.

4. Applicant has not pointed out where the limitations of the amended limitation of "once the network enabled device is started" is supported in the specification. Particularly its placement after execution of the first program code and before execution of the second program code. (See **MPEP chapter 2163.03 section (I) and chapter 2163.04 section (I) and chapter 2163.06**) Applicant is requested to provide support for the amended claims.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

6. Claims 1,45 rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Applicant has not pointed out where the limitations of the amended limitation of “once the network enabled device is started” is supported in the specification. Particularly its placement after execution of the first program code and before execution of the second program code. (See **MPEP chapter 2163.03 section (I) and chapter 2163.04 section (I) and chapter 2163.06**) Applicant is requested to provide support for the amended claims.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. **Claims 1-4,6-9,17,43 and 46 rejected under 35 U.S.C. 103(a) as being unpatentable over Apfel et al (US Patent No 5,974,454) in view of Ballard (US Patent No 6,473,756).**

9. ***In reference to independent claim 1***, Apfel teaches a method performed on a network enabled device at a content recipient once the network enabled device is started, comprising:

executing first program code at the content recipient so as to identify a content provider having posted content of interest to the content recipient (column 6 lines 40-45, Apfel discloses identifying a server (i.e. provider) that has content of interest);

once the network enabled device is started, executing second program code at the content recipient so as to automatically, without user intervention, initiate a request for the posted content (column 7 lines 4-9 and column 10 lines 52-54, Apfel discloses the local computer sending a query (i.e. request) to the server (i.e. provider) for an update (i.e. content));

executing third program code at the content recipient so as to automatically, without user intervention, receive the posted content at the content recipient in response to execution of the second program code (column 10 lines 61-63, Apfel discloses downloading the content); and

Although Apfel teaches providing an indirect notice that the content was downloaded by updating the registry (column 11 lines 1-5), Apfel fails to explicitly teach executing fourth program code at the content recipient so as to *display* a notice to the content recipient that the posted content has been received at the content recipient in response to execution of the second and third program code, and so as to visually display the posted content in response to user action. However, Ballard discloses displaying a message to a user indicating that a download is complete for the purpose of keeping the user informed as to the status of their request (Ballard, column 7 lines 1-7). Ballard also discloses that the downloaded file itself can be displayed, which is of course in response to the user search for the file.

It would have been obvious for one of ordinary skill in the art to modify Apfel by providing a notice to the content recipient that the posted content has been received at the content recipient as per the teachings of Ballard for the purpose of keeping the user informed as to the status of their request.

As for its dependent claims:

10. In reference to claim 2, Apfel teaches the method of claim 1 further comprising canceling future requests for the posted content without communicating such an intent to the content provider (column 8 lines 30-36, Apfel discloses cancelling auto-update feature).
11. In reference to claim 3, Apfel teaches the method of claim 1 wherein the executing of the second program code at the content recipient so as to automatically initiate a request for the posted content comprises executing second program code at the content recipient so as to automatically and recurrently initiate requests for the posted content (column 8 lines 22-33, Apfel discloses periodic updating).
12. In reference to claim 4, Apfel teaches the method of claim 3 further comprising canceling future requests for the posted content without communicating such an intent to the content provider (column 8 lines 30-36, Apfel discloses cancelling auto-update feature).
13. In reference to claim 6, Apfel teaches the method of claim 5 further comprising canceling future requests for the posted content without communicating such an intent to the content provider (column 8 lines 30-36, Apfel discloses cancelling auto-update feature).
14. In reference to claim 7, Apfel teaches the method of claim 5 wherein the executing of the second program code at the content recipient so as to automatically initiate a request for the posted content comprises executing second program code at the content recipient so as to automatically and recurrently initiate requests for the posted content (column 8 lines 22-33, Apfel discloses periodic updating).
15. In reference to claim 8, Apfel teaches the method of claim 7 further comprising canceling future requests for the posted content without communicating such an intent to the content provider (column 8 lines 30-36, Apfel discloses cancelling auto-update feature).

16. In reference to claim 9, Apfel teaches the method of claim 1 further comprising executing fifth program code at the recipient so as to provide notice to the content recipient that no posted content has been received by the content recipient in response to execution of the second program code (column 9 lines 40-48, Apfel discloses a “NOUPDATE” message that notifies the recipient that there is no new content).

17. In reference to claim 17, Apfel teaches the method of claim 1, electronically receiving the second program code at the content recipient from the content provider (column 6 line 63 – column 7 line 9).

18. In reference to claim 43, Apfel teaches the method of claim 1, further comprising executing fifth program code at the content recipient so that, upon an action related to the notice, the posted content is displayed to a user (Ballard column 7 lines 1-7, see above rationale).

19. In reference to claim 46, Apfel teaches the method of claim 1, wherein they are performed without providing an e-mail address of the content recipient to the content provider (column 8 lines 45-55, Apfel disclose a query which does not involve email address of the recipient).

20. Claims 12,13,15,16 rejected under 35 U.S.C. 103(a) as being unpatentable over Apfel et al (US Patent No 5,974,454) in view of Ballard (US Patent No 6,473,756) in further view of Stephens (US Patent No 6,557,026).

21. In reference to claim 12, Apfel teaches the method of claims 1. Apfel fails to teach wherein executing third program code so that the posted content, when received, is displayed behind a session if the session is active. However, Stephens teaches where information can be viewed on a computer by the use of overlaying windows in front of each other. Stephens

discloses outputting a window to a display even though the window will not be visible to a user where the user can later be alerted of its presence (Stephens, column 6 lines 20-35 and column 7 lines 35-40 & 50-60). It would have been obvious for one of ordinary skill in the art to modify to display a window (i.e the posted content) behind an active window as per the teachings of Stephens so as to later be alerted of its presence.

22. In reference to claim 13, Apfel in view of Stephens teach the method of claim 12, wherein the executing of the fourth program code at the content recipient comprises executing the fourth code so as to display the notice even if the session is active (Stephens, column 6 lines 20-35 and column 7 lines 35-40 & 50-60, see above rationale).

23. In reference to claims 15,16, Apfel in view of Stephens teach the method of claim 13 above. Apfel fails to explicitly teach wherein the method further comprises executing fifth program code at the content recipient so that, upon an action related to the notice, the posted content burns through the session so that the posted content is visible to a user; and comprises executing fifth program code at the content recipient so that, upon an action related to the notice, the posted content is displayed in front of the session so that the posted content is visible to a user. However, Stephens teaches overlaying windows for multiple active programs. Stephens discloses bringing a window layer to the front of all other layers so that the layer can then be visible to a user (Stephens, column 6 lines 20-35 and column 7 lines 35-40 & 50-60).

It would have been obvious for one of ordinary skill in the art to modify to display a window (i.e the posted content) in front of an active window as per the teachings of Stephens so as to be alerted of its presence.

24. Claim 14 rejected under 35 U.S.C. 103(a) as being unpatentable over Apfel et al (US Patent No 5,974,454) in view of Ballard (US Patent No 6,473,756) in further view of Stephens (US Patent No 6,557,026) in further view of Beyda et al (US Patent No 6,636,965).

In reference to claim 14, Apfel in further view of Stephens teach the method of claim 13. Apfel fails to explicitly teach wherein the notice is an icon. However, Beyda teaches recipients receiving electronic messages. Beyda discloses icons accompanying the messages for the purpose of alerting users of the message (Abstract and column 4 lines 10-20). It would have been obvious for one of ordinary skill in the art to modify Apfel by making the notice an icon as per the teachings of Beyda complete messages for the purpose of alerting users of the message.

25. The text of the relevant sections of Title 35, U.S. Code §103 is cited above.

26. Claims 18,19,26,28-31,44,47 rejected under 35 U.S.C. 103(a) as being unpatentable over Apfel et al (US Patent No 5,974,454) in view of Crill et al (US Patent No 6,445,822).

27. In reference to independent claim 18, Apfel teaches a computer readable medium, storing code, when executed by a computing device, performs the following functions:

automatically initiating a request for the download of a content element posted by a content provider (column 7 lines 4-9, Apfel discloses the local computer sending a query (i.e. request) to the server (i.e. provider) for an update (i.e. content element)); and

Apfel teaches downloading upgrade components for a program (column 7 lines 4-9 & 33-34). Apfel fails to explicitly teach that the content element is a graphical content element of a web page posted by a content provider; and receiving only the graphical content element in response to the request without receiving the whole web page. However, Crill teaches

downloading content based on comparison status for the purpose of facilitating the download of a specific type of content. Crill discloses searching an HTML file (i.e. web page) and downloading only the graphic files without downloading other portions of the web page (Crill, column 8 lines 17-23). It would have been obvious for one of ordinary skill in the art to modify Apfel wherein the content element is a graphical content element of a web page posted by a content provider; and receiving only the graphical content element in response to the request without receiving the whole web page as per the teachings of Crill for the purpose of downloading only what is specifically needed to update a program. In this case, the program component of Apfel that would be updated is the graphical elements of the program as provided by Crill for the purpose of facilitating the download of only a specific type of content that is needed.

As for its dependent claims:

28. In reference to claim 19, Apfel teaches the computer readable storage medium of claim 18, wherein the code provides notice that the posted content has been received in response to the request (column 11 lines 1-5, Apfel provides an indirect notice that content was received via an update to the registry).
29. In reference to claim 26 Apfel teaches the computer readable storage medium of claim 18, wherein the stored code when executed, automatically and recurrently initiate requests for the posted content (column 8 lines 22-33, Apfel discloses periodic updating).
30. In reference to claim 28 Apfel teaches the computer readable storage medium of claim 27, wherein the stored code when executed, automatically and recurrently initiate requests for the posted content (column 8 lines 22-33, Apfel discloses periodic updating).

31. In reference to claim 29, Apfel teaches the computer readable storage medium claim 18, providing notice that no posted content has been received in response to the request (column 9 lines 40-48, Apfel discloses a “NOUPDATE” message that notifies the recipient that there is no new content).

32. In reference to claim 30, Apfel teaches the computer readable storage medium of claim 18 wherein the stored program code is electronically received from the content provider and is stored by the computer readable storage medium (column 6 line 63 – column 7 line 9).

33. In reference to claim 31, Apfel teaches the computer readable storage medium of claim 30 wherein the remote site is the content provider (column 6 line 63 – column 7 line 9).

34. In reference to claim 47, Apfel teaches the computer readable storage medium of claim 18, wherein without providing an e-mail address of the content recipient to the content provider (column 8 lines 45-55, Apfel disclose a query which does not involve email address of the recipient).

40. Claims 22 rejected under 35 U.S.C. 103(a) as being unpatentable over Apfel et al (US Patent No 5,974,454) in view of Ballard (US Patent No 6,473,756).

41. In reference to claim 22, Apfel teaches the computer readable storage medium of claim 18 above. Although Apfel teaches providing an indirect notice that the content was downloaded by updating the registry (column 11 lines 1-5), Apfel fails to explicitly teach executing fourth program code at the content recipient so as to *display* a notice to the content recipient that the posted content has been received at the content recipient in response to execution of the second and third program code. However, Ballard discloses displaying a message to a user indicating

that a download is complete for the purpose of keeping the user informed as to the status of their request (Ballard, column 7 lines 1-7).

It would have been obvious for one of ordinary skill in the art to modify Apfel by providing a notice to the content recipient that the posted content has been received at the content recipient as per the teachings of Ballard for the purpose of keeping the user informed as to the status of their request.

42. Claims 20,21,24,25 rejected under 35 U.S.C. 103(a) as being unpatentable over Apfel et al (US Patent No 5,974,454) in view of Stephens (US Patent No 6,557,026).

43. In reference to claim 20, Apfel in view of Crill teach the computer storage medium of claim 18. Apfel fails to teach wherein executing third program code so that the posted content, when received, is displayed behind a session if the session is active. However, Stephens teaches where information can be viewed on a computer by the use of overlaying windows in front of each other. Stephens discloses outputting a window to a display even though the window will not be visible to a user where the user can later be alerted of its presence (Stephens, column 6 lines 20-35 and column 7 lines 35-40 & 50-60). It would have been obvious for one of ordinary skill in the art to modify to display a window (i.e the posted content) behind an active window as per the teachings of Stephens so as to later be alerted of its presence.

44. In reference to claim 21, Apfel teaches the computer readable storage medium of claim 20, wherein the code provides notice that the posted content has been received in response to the request (column 11 lines 1-5, Apfel provides an indirect notice that content was received via an update to the registry).

45. In reference to claims 24 and 25, Apfel teaches the computer readable storage of claim 18 above. Apfel fails to explicitly teach burning the posted content the posted content through a session so that the posted content is visible to a user; and displaying the posted content in front of the session so that the posted content is visible to a user. However, Stephens teaches overlaying windows for multiple active programs. Stephens discloses bringing a window layer to the front of all other layers so that the layer can then be visible to a user (column 2 lines 3-11 & 53-67 and column 10 lines 20-67). It would have been obvious for one of ordinary skill in the art to modify to display a window (i.e the posted content) in front of an active window as per the teachings of Stephens so as to be alerted of its presence.

46. Claims 23 rejected under 35 U.S.C. 103(a) as being unpatentable over Apfel et al (US Patent No 5,974,454) in further view of Beyda et al (US Patent No 6,636,965).

In reference to claim 23, Apfel in view of Crill teach the computer readable storage medium of claim 18. Apfel fails to explicitly teach wherein the notice is an icon. However, Beyda teaches recipients receiving electronic messages. Beyda discloses icons accompanying the messages for the purpose of alerting users of the message (Abstract and column 4 lines 10-20). It would have been obvious for one of ordinary skill in the art to modify Apfel by making the notice an icon as per the teachings of Beyda complete messages for the purpose of alerting users of the message.

Claim Rejections - 35 USC § 102

47. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

48. Claims 32-34,40,41,45,48 rejected under 35 U.S.C. 102(b) as being anticipated by Apfel et al (US Patent No 5,974,454).

49. *In reference to independent claim 32*, Apfel teaches a method comprising:

executing first program code at content provider so as to post content for access by a content recipient (column 5 line 62 – column 6 line 2 and column 6 lines 23-25, Apfel discloses Internet sites (i.e. providers) hosting program components (i.e. content) for access by local computers (i.e. recipients));

executing second program code on a network enabled device at content recipient following start up of the network enabled device so as to automatically, without user intervention, (i) access the content provider (column 7 lines 4-9, Apfel discloses the local computer sending a query (i.e. request) to the server (i.e. provider)) and (ii) initiate receipt by the content recipient of the posted content if the posted content is new (column 6 line 63 – column 7 line 9, Apfel discloses initiating a request and download if an upgrade is available (i.e. if content is new). The limitation "following start up" is broad and is an inherent feature of Apfel because computer 20 of Apfel must first be started before any code is executed);

executing third program code at the content provider so as to send a message notifying the content recipient that the posted content is not new (column 9 lines 40-48, Apfel discloses a "NOUPDATE" message that notifies the recipient that there is no new content); and

electronically receiving the second program code at the content recipient (it is an inherent feature of Apfel that this code must be electronically loaded (i.e. received) firstly into the hard

drive of computer 20 of Apfel and then loaded (i.e. received) into dynamic memory of Apfel in order to perform execution of the code).

50. ***In reference to independent claim 45***, Apfel teaches a method on a network enabled device at a content recipient after the network enabled device is started, comprising:

executing first program code at content recipient so as to identify a content provider having posted content of interest to the recipient (column 6 lines 40-45, Apfel discloses identifying a server (i.e. provider) that has content of interest);

executing second program code at content recipient so as to automatically, without user intervention, initiate a request for the posted content and to automatically, without user intervention, download the posted content if the posted content is not new (column 6 line 63 – column 7 line 9 and column 10 lines 48-63, Apfel discloses initiating a request and download if an upgrade is available (i.e. if content is new)); and

executing third program code at the content recipient so as to receive a notice that the content provider has no new content to download to the content recipient (column 9 lines 40-48, Apfel discloses a “NOUPDATE” message that notifies the recipient that there is no new content).

As for their dependent claims:

51. In reference to claim 33, Apfel teaches the method of claim 32 further comprising canceling future requests for the posted content without communicating such an intent to the content provider (column 8 lines 30-36, Apfel discloses cancelling auto-update feature).

52. In reference to claim 34, Apfel teaches the of claim 32 wherein the executing of the second program code at the content recipient so as to automatically and recurrently (i) access the

content provider and (ii) initiate the receipt by the content recipient of the posted content (column 8 lines 22-33, Apfel discloses periodic updating).

53. In reference to claim 40, Apfel teaches the method of claim 32 further comprising executing third program code at the content provider so as to determine whether the content recipient possesses the second program code and, if the content recipient does not possess the second program code, to download the second program code to the content recipient (column 10 lines 7-33, Apfel discloses determining whether an update is available).

54. In reference to claim 41, Apfel teaches the method of claim 32, wherein electronically receiving the second program code at the content recipient from the content provider (column 6 line 63 – column 7 line 9).

55. In reference to claim 48, Apfel teaches the method of claim 32, wherein they are performed without providing an e-mail address of the content recipient to the content provider (column 8 lines 45-55, Apfel discloses a query which does not involve email address of the recipient).

56. The text of the relevant sections of Title 35, U.S. Code §103 is cited above.

57. Claims 36-39 rejected under 35 U.S.C. 103(a) as being unpatentable over Apfel et al (US Patent No 5,974,454) in view of Stephens (US Patent No 6,557,026).

58. In reference to claim 36, Apfel teaches the method of claims 32. Apfel fails to teach wherein executing third program code so that the posted content, when received, is displayed behind a session if the session is active. However, Stephens teaches where information can be viewed on a computer by the use of overlaying windows in front of each other. Stephens

discloses outputting a window to a display even though the window will not be visible to a user where the user can later be alerted of its presence (Stephens, column 6 lines 20-35 and column 7 lines 35-40 & 50-60). It would have been obvious for one of ordinary skill in the art to modify to display a window (i.e the posted content) behind an active window as per the teachings of Stephens so as to later be alerted of its presence.

59. In reference to claim 37, Apfel in view of Stephens teach the method of claim 36, wherein the executing of the fourth program code at the content recipient comprises executing the fourth code so as to display the notice even if the session is active (Stephens, column 6 lines 20-35 and column 7 lines 35-40 & 50-60, see above rationale).

60. In reference to claims 38,39, Apfel in view of Stephens teach the method of claim 37 above. Apfel fails to explicitly teach wherein the method further comprises executing fifth program code at the content recipient so that, upon an action related to the notice, the posted content burns through the session so that the posted content is visible to a user; and comprises executing fifth program code at the content recipient so that, upon an action related to the notice, the posted content is displayed in front of the session so that the posted content is visible to a user. However, Stephens teaches overlaying windows for multiple active programs. Stephens discloses bringing a window layer to the front of all other layers so that the layer can then be visible to a user (Stephens, column 6 lines 20-35 and column 7 lines 35-40 & 50-60).

It would have been obvious for one of ordinary skill in the art to modify to display a window (i.e the posted content) in front of an active window as per the teachings of Stephens so as to be alerted of its presence.

Conclusion

61. The above rejections are based upon the broadest reasonable interpretation of the claims. Applicant is advised that the specified citations of the relied upon prior art, in the above rejections, are only representative of the teachings of the prior art, and that any other supportive sections within the entirety of the reference (including any figures, incorporation by references, claims and/or priority documents) is implied as being applied to teach the scope of the claims.

62. Applicant may not introduce any new matter to the claims or to the specification. For any subsequent response that contains new/amended claims, Applicant is required to cite its corresponding support in the specification. (See MPEP chapter 2163.03 section (I.) and chapter 2163.04 section (I.) and chapter 2163.06)

Any inquiry concerning this communication or earlier communications from the examiner should be directed to RAMY M. OSMAN whose telephone number is (571)272-4008. The examiner can normally be reached on M-F 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ario Etienne can be reached on (571) 272-4001. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.